

SENATE BILL No. 144

DIGEST OF INTRODUCED BILL

Citations Affected: IC 27-4-1-4; IC 27-8-19.8; IC 34-30-2-116.3.

Synopsis: Viatical settlements. Makes a violation of the chapter concerning viatical settlements an unfair method of competition and an unfair and deceptive act or practice in the business of insurance. Specifies applicability of the law when a policy is owned by more than one person. Establishes certain requirements for viatical settlement brokers, viatical settlement providers, and insurers, including requirements concerning licensure, reporting, record keeping, examinations, confidentiality, liability for certain actions, financing, advertising, and viatical settlement of a policy less than two years after issuance. Specifies requirements when the insured has a "terminal illness or chronic illness", rather than a "catastrophic or life threatening illness". Repeals a definition of "viatical settlement agent" and a provision prohibiting an insurance producer from receiving a commission in connection with viatical settlement of a policy less than two years after the insurance producer's sale of the policy.

Effective: July 1, 2007.

Steele

January 8, 2007, read first time and referred to Committee on Insurance and Financial Institutions.

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Introduced

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

SENATE BILL No. 144

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 27-4-1-4, AS AMENDED BY P.L.1-2006,
2 SECTION 487, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2007]: Sec. 4. The following are hereby defined
4 as unfair methods of competition and unfair and deceptive acts and
5 practices in the business of insurance:

6 (1) Making, issuing, circulating, or causing to be made, issued, or
7 circulated, any estimate, illustration, circular, or statement:
8 (A) misrepresenting the terms of any policy issued or to be
9 issued or the benefits or advantages promised thereby or the
10 dividends or share of the surplus to be received thereon;
11 (B) making any false or misleading statement as to the
12 dividends or share of surplus previously paid on similar
13 policies;
14 (C) making any misleading representation or any
15 misrepresentation as to the financial condition of any insurer,
16 or as to the legal reserve system upon which any life insurer
17 operates;

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(D) using any name or title of any policy or class of policies misrepresenting the true nature thereof; or

(E) making any misrepresentation to any policyholder insured in any company for the purpose of inducing or tending to induce such policyholder to lapse, forfeit, or surrender the policyholder's insurance.

(2) Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to any person in the conduct of the person's insurance business, which is untrue, deceptive, or misleading.

(3) Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature which is false, or maliciously critical of or derogatory to the financial condition of an insurer, and which is calculated to injure any person engaged in the business of insurance.

(4) Entering into any agreement to commit, or individually or by a concerted action committing any act of boycott, coercion, or intimidation resulting or tending to result in unreasonable restraint of, or a monopoly in, the business of insurance.

(5) Filing with any supervisory or other public official, or making, publishing, disseminating, circulating, or delivering to any person, or placing before the public, or causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement of financial condition of an insurer with intent to deceive. Making any false entry in any book, report, or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to which such insurer is required by law to report, or which has authority by law to examine into its condition or into any of its affairs, or, with like intent, willfully omitting to make a true entry of any material fact pertaining to the business of such insurer in any book, report, or statement of such insurer.

(6) Issuing or delivering or permitting agents, officers, or

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employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance.

(7) Making or permitting any of the following:

(A) Unfair discrimination between individuals of the same class and equal expectation of life in the rates or assessments charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract; however, in determining the class, consideration may be given to the nature of the risk, plan of insurance, the actual or expected expense of conducting the business, or any other relevant factor.

(B) Unfair discrimination between individuals of the same class involving essentially the same hazards in the amount of premium, policy fees, assessments, or rates charged or made for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever; however, in determining the class, consideration may be given to the nature of the risk, the plan of insurance, the actual or expected expense of conducting the business, or any other relevant factor.

(C) Excessive or inadequate charges for premiums, policy fees, assessments, or rates, or making or permitting any unfair discrimination between persons of the same class involving essentially the same hazards, in the amount of premiums, policy fees, assessments, or rates charged or made for:

(i) policies or contracts of reinsurance or joint reinsurance, or abstract and title insurance;

(ii) policies or contracts of insurance against loss or damage to aircraft, or against liability arising out of the ownership, maintenance, or use of any aircraft, or of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance; or

(iii) policies or contracts of any other kind or kinds of insurance whatsoever.

However, nothing contained in clause (C) shall be construed to apply to any of the kinds of insurance referred to in clauses (A)

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and (B) nor to reinsurance in relation to such kinds of insurance. Nothing in clause (A), (B), or (C) shall be construed as making or permitting any excessive, inadequate, or unfairly discriminatory charge or rate or any charge or rate determined by the department or commissioner to meet the requirements of any other insurance rate regulatory law of this state.

(8) Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract or policy of insurance of any kind or kinds whatsoever, including but not in limitation, life annuities, or agreement as to such contract or policy other than as plainly expressed in such contract or policy issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends, savings, or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract or policy; or giving, or selling, or purchasing or offering to give, sell, or purchase as inducement to such insurance or annuity or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, limited liability company, or partnership, or any dividends, savings, or profits accrued thereon, or anything of value whatsoever not specified in the contract. Nothing in this subdivision and subdivision (7) shall be construed as including within the definition of discrimination or rebates any of the following practices:

(A) Paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, so long as any such bonuses or abatement of premiums are fair and equitable to policyholders and for the best interests of the company and its policyholders.

(B) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expense.

(C) Readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first year or of any subsequent year of insurance thereunder, which may be made retroactive only for such policy year.

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(D) Paying by an insurer or insurance producer thereof duly licensed as such under the laws of this state of money, commission, or brokerage, or giving or allowing by an insurer or such licensed insurance producer thereof anything of value, for or on account of the solicitation or negotiation of policies or other contracts of any kind or kinds, to a broker, an insurance producer, or a solicitor duly licensed under the laws of this state, but such broker, insurance producer, or solicitor receiving such consideration shall not pay, give, or allow credit for such consideration as received in whole or in part, directly or indirectly, to the insured by way of rebate.

(9) Requiring, as a condition precedent to loaning money upon the security of a mortgage upon real property, that the owner of the property to whom the money is to be loaned negotiate any policy of insurance covering such real property through a particular insurance producer or broker or brokers. However, this subdivision shall not prevent the exercise by any lender of the lender's right to approve or disapprove of the insurance company selected by the borrower to underwrite the insurance.

(10) Entering into any contract, combination in the form of a trust or otherwise, or conspiracy in restraint of commerce in the business of insurance.

(11) Monopolizing or attempting to monopolize or combining or conspiring with any other person or persons to monopolize any part of commerce in the business of insurance. However, participation as a member, director, or officer in the activities of any nonprofit organization of insurance producers or other workers in the insurance business shall not be interpreted, in itself, to constitute a combination in restraint of trade or as combining to create a monopoly as provided in this subdivision and subdivision (10). The enumeration in this chapter of specific unfair methods of competition and unfair or deceptive acts and practices in the business of insurance is not exclusive or restrictive or intended to limit the powers of the commissioner or department or of any court of review under section 8 of this chapter.

(12) Requiring as a condition precedent to the sale of real or personal property under any contract of sale, conditional sales contract, or other similar instrument or upon the security of a chattel mortgage, that the buyer of such property negotiate any policy of insurance covering such property through a particular insurance company, insurance producer, or broker or brokers.

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However, this subdivision shall not prevent the exercise by any seller of such property or the one making a loan thereon of the right to approve or disapprove of the insurance company selected by the buyer to underwrite the insurance.

(13) Issuing, offering, or participating in a plan to issue or offer, any policy or certificate of insurance of any kind or character as an inducement to the purchase of any property, real, personal, or mixed, or services of any kind, where a charge to the insured is not made for and on account of such policy or certificate of insurance. However, this subdivision shall not apply to any of the following:

(A) Insurance issued to credit unions or members of credit unions in connection with the purchase of shares in such credit unions.

(B) Insurance employed as a means of guaranteeing the performance of goods and designed to benefit the purchasers or users of such goods.

(C) Title insurance.

(D) Insurance written in connection with an indebtedness and intended as a means of repaying such indebtedness in the event of the death or disability of the insured.

(E) Insurance provided by or through motorists service clubs or associations.

(F) Insurance that is provided to the purchaser or holder of an air transportation ticket and that:

(i) insures against death or nonfatal injury that occurs during the flight to which the ticket relates;

(ii) insures against personal injury or property damage that occurs during travel to or from the airport in a common carrier immediately before or after the flight;

(iii) insures against baggage loss during the flight to which the ticket relates; or

(iv) insures against a flight cancellation to which the ticket relates.

(14) Refusing, because of the for-profit status of a hospital or medical facility, to make payments otherwise required to be made under a contract or policy of insurance for charges incurred by an insured in such a for-profit hospital or other for-profit medical facility licensed by the state department of health.

(15) Refusing to insure an individual, refusing to continue to issue insurance to an individual, limiting the amount, extent, or kind of coverage available to an individual, or charging an individual a

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different rate for the same coverage, solely because of that individual's blindness or partial blindness, except where the refusal, limitation, or rate differential is based on sound actuarial principles or is related to actual or reasonably anticipated experience.

(16) Committing or performing, with such frequency as to indicate a general practice, unfair claim settlement practices (as defined in section 4.5 of this chapter).

(17) Between policy renewal dates, unilaterally canceling an individual's coverage under an individual or group health insurance policy solely because of the individual's medical or physical condition.

(18) Using a policy form or rider that would permit a cancellation of coverage as described in subdivision (17).

(19) Violating IC 27-1-22-25, IC 27-1-22-26, or IC 27-1-22-26.1 concerning motor vehicle insurance rates.

(20) Violating IC 27-8-21-2 concerning advertisements referring to interest rate guarantees.

(21) Violating IC 27-8-24.3 concerning insurance and health plan coverage for victims of abuse.

(22) Violating IC 27-8-26 concerning genetic screening or testing.

(23) Violating IC 27-1-15.6-3(b) concerning licensure of insurance producers.

(24) Violating IC 27-1-38 concerning depository institutions.

(25) Violating IC 27-8-28-17(c) or IC 27-13-10-8(c) concerning the resolution of an appealed grievance decision.

(26) Violating IC 27-8-5-2.5(e) through IC 27-8-5-2.5(j) or IC 27-8-5-19.2.

(27) Violating IC 27-2-21 concerning use of credit information.

(28) Violating IC 27-4-9-3 concerning recommendations to senior consumers.

(29) Violating IC 27-8-19.8 concerning viatical settlements.

SECTION 2. IC 27-8-19.8-0.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 0.5. As used in this chapter, "advertising" means:**

(1) written, electronic, or printed communication; or

(2) communication:

(A) by means of a recorded telephone message; or

(B) transmitted on radio, television, the Internet, or similar communications media;

including a film strip, motion picture, or video;

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that is published, disseminated, circulated, or placed directly before the public in Indiana to create an interest in or induce a person to sell, assign, devise, bequest, or transfer the death benefit or ownership of a policy under a viatical settlement contract.

SECTION 3. IC 27-8-19.8-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 1.5. As used in this chapter, "business of viatical settlements" means an activity related to the:**

- (1) offer;
- (2) solicitation;
- (3) negotiation;
- (4) procurement;
- (5) effectuation;
- (6) purchase;
- (7) investment;
- (8) financing;
- (9) monitoring;
- (10) tracking;
- (11) underwriting;
- (12) sale;
- (13) transfer;
- (14) assignment;
- (15) pledge; or
- (16) hypothecation;

of a viatical settlement contract.

SECTION 4. IC 27-8-19.8-1.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 1.7. As used in this chapter, "chronic illness" means an illness or condition that causes an individual to:**

- (1) be unable to perform at least two (2) activities of daily living, including eating, toileting, transferring, bathing, dressing, or continence;
- (2) require substantial supervision to protect the individual from a threat to health and safety due to severe cognitive impairment; or
- (3) have a level of disability similar to the level of disability described in subdivision (1), as determined by the secretary of the United States Department of Health and Human Services.

SECTION 5. IC 27-8-19.8-1.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 1.8. As used in this chapter,**

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"commissioner" refers to the insurance commissioner appointed under IC 27-1-1-2.

SECTION 6. IC 27-8-19.8-2.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 2.4. (a) As used in this chapter, "financing entity" means an underwriter, a placement agent, a lender, a purchaser of securities, a purchaser of a policy or certificate from a viatical settlement provider, a credit enhancer, or an entity that has a direct ownership in a policy that is the subject of a viatical settlement contract:**

(1) whose principal activity related to the viatical settlement is providing funds to effect the viatical settlement or purchase of a viaticated policy; and

(2) who has an agreement in writing with a licensed viatical settlement provider to:

(A) finance the acquisition of a viatical settlement contract; or

(B) provide stop loss insurance.

(b) The term does not include a nonaccredited investor.

SECTION 7. IC 27-8-19.8-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 2.5. As used in this chapter, "fraudulent viatical settlement act" includes the following:**

(1) An act or omission committed by a person who, knowingly or with intent to defraud, for the purpose of depriving another person of property or for pecuniary gain commits, or permits the person's employees or agents to engage in, acts including the following:

(A) Presenting, causing to be presented, or preparing with knowledge or belief that it will be presented to or by a viatical settlement provider, viatical settlement broker, financing entity, insurer, insurance producer, or another person, false material information, or concealing material information, as part of, in support of, or concerning a fact material to one (1) or more of the following:

(i) An application for the issuance of a policy or viatical settlement contract.

(ii) The underwriting of a policy or viatical settlement contract.

(iii) A claim for payment or benefit under a policy or viatical settlement contract.

(iv) Premiums paid on a policy.

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(v) Payments and changes in ownership or beneficiary made in accordance with the terms of a policy or viatical settlement contract.

(vi) The reinstatement or conversion of a policy.

(vii) The solicitation, offer, effectuation, or sale of a viatical settlement contract.

(viii) The issuance of written evidence of a policy or viatical settlement contract.

(ix) A financing transaction.

(B) Employing a device, a scheme, or an artifice to defraud related to a viaticated policy.

(2) In the furtherance of a fraud or to prevent the detection of a fraud, committing or permitting the person's employees or agents to do one (1) or more of the following:

(A) Remove, conceal, alter, destroy, or sequester from the commissioner the assets or records of a licensee or another person engaged in the business of viatical settlements.

(B) Misrepresent or conceal the financial condition of a licensee, a financing entity, an insurer, or another person.

(C) Transact the business of viatical settlements in violation of laws requiring a license, a certificate of authority, or another legal authority for the transaction of the business of viatical settlements.

(D) File with the commissioner or the chief insurance regulatory official of another jurisdiction a document containing false information or otherwise conceal from the commissioner or regulatory official information about a material fact.

(3) Embezzlement, theft, misappropriation, or conversion of money, funds, premiums, credits, or other property of a viatical settlement provider, a viatical settlement broker, an insurance producer, an insurer, an insured, a viator, a policy owner, or another person engaged in the business of viatical settlements or the business of insurance.

(4) Recklessly entering into, negotiating, or otherwise dealing in a viatical settlement contract, the subject of which is a policy that was obtained by:

(A) presenting false information concerning a fact material to the policy; or

(B) concealing, for the purpose of misleading another, information concerning a fact material to the policy;

where the viator or the viator's agent intended to defraud the

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insurer that issued the policy.

(5) Facilitating the change of state of residency of a policy or a viator to avoid compliance with this chapter.

(6) Attempting to commit, assist, aid, or abet in the commission of, or conspiracy to commit, one (1) or more of the acts or omissions described in subdivisions (1) through (5).

SECTION 8. IC 27-8-19.8-3, AS AMENDED BY P.L.223-2005, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. As used in this chapter, "insured" refers to an individual whose life is the subject of insurance under a ~~life insurance~~ policy. ~~or contract.~~

SECTION 9. IC 27-8-19.8-3.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3.2. As used in this chapter, "licensee" refers to the following:

(1) A viatical settlement provider that is licensed under this chapter.

(2) A person that is authorized under section 8.5 of this chapter to act as a viatical settlement broker.

SECTION 10. IC 27-8-19.8-3.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3.5. As used in this chapter, "NAIC" refers to the National Association of Insurance Commissioners.

SECTION 11. IC 27-8-19.8-3.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3.6. As used in this chapter, "policy" means an individual policy, a group policy, a group certificate, a contract, or an arrangement of life insurance that:

(1) affects the rights of an Indiana resident; or

(2) has a reasonable relation to Indiana;

regardless of whether the policy, certificate, contract, or arrangement is delivered or issued for delivery in Indiana.

SECTION 12. IC 27-8-19.8-3.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3.7. As used in this chapter, "recklessly" means:

(1) in conscious and clearly unjustifiable disregard of a substantial likelihood of the existence of relevant facts or risks; and

(2) involving a gross deviation from acceptable standards of conduct.

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SECTION 13. IC 27-8-19.8-3.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 3.8. As used in this chapter, "related provider trust" means a titling trust or another trust:**

(1) that was established by a viatical settlement provider or a financing entity for the sole purpose of holding the ownership or beneficial interest in a viaticated policy in connection with a transaction for the financing of a viatical settlement contract; and

(2) that has a written agreement with a viatical settlement provider under which:

(A) the viatical settlement provider is responsible for ensuring compliance with legal requirements; and

(B) the trust agrees to make all records and files related to transactions concerning viatical settlement contracts available to the commissioner as if those records and files were maintained directly by the viatical settlement provider.

SECTION 14. IC 27-8-19.8-3.9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 3.9. As used in this chapter, "special purpose entity" means a corporation, partnership, trust, limited liability company, or similar entity formed only to directly or indirectly provide access to institutional capital markets for a financing entity or viatical settlement provider.**

SECTION 15. IC 27-8-19.8-4.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 4.1. As used in this chapter, "terminal illness" means an illness that is reasonably expected to result in death in twenty-four (24) months or less.**

SECTION 16. IC 27-8-19.8-4.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 4.5. As used in this chapter, "viatical settlement broker" means a person that represents a viator and, for a fee, commission, or other valuable consideration, solicits, offers, or attempts to negotiate viatical ~~settlements~~ settlement contracts between a viator and one (1) or more viatical settlement providers.**

SECTION 17. IC 27-8-19.8-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 5. (a) As used in this chapter, "viatical settlement provider" means a person, other than a viator, that**

(+) enters into or effectuates a viatical settlement contract with

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1 a viator. ~~or~~

2 (2) obtains financing for the purchase, acquisition, transfer, or
3 other assignment of one (1) or more viatical settlement contracts;
4 viaticated policies; or interests therein; or otherwise sells, assigns,
5 transfers, pledges, hypothecates, or disposes of one (1) or more
6 viatical settlement contracts, viaticated policies, or interests
7 therein.

8 (b) The term does not include any of the following:

9 (1) A bank, savings bank, savings association, credit union, or
10 other licensed lending institution that takes an assignment of a ~~life~~
11 ~~insurance~~ policy as collateral for a loan.

12 (2) The issuer of a ~~life insurance~~ policy that makes a policy loan,
13 permits surrender of the policy, or pays other policy benefits,
14 including accelerated benefits, in accordance with the terms of the
15 policy.

16 (3) **An authorized or eligible insurer that provides stop loss**
17 **coverage to a viatical settlement provider, financing entity,**
18 **special purpose entity, or related provider trust.**

19 (4) **A financing entity.**

20 (5) **A special purpose entity.**

21 (6) **A related provider trust.**

22 (7) **An accredited investor or qualified institutional buyer (as**
23 **defined in Regulation D, Rule 501 or Rule 144A of the federal**
24 **Securities Act of 1933 (15 U.S.C. 77a -77aa)) that purchases a**
25 **viaticated policy from a viatical settlement provider.**

26 SECTION 18. IC 27-8-19.8-6 IS AMENDED TO READ AS
27 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 6. (a) As used in this
28 chapter, "viatical settlement contract" means ~~an~~ **a written** agreement
29 for the purchase, sale, assignment, transfer, devise, or bequest of a
30 portion of the death benefit or ownership of a ~~life insurance~~ policy or
31 contract for consideration that **establishes the terms under which**
32 **compensation or anything of value is paid for a policy, which**
33 **compensation or value** is less than the expected death benefit of the
34 ~~life insurance~~ policy, ~~or contract~~. **in return for the viator's**
35 **assignment, transfer, sale, devise, or bequest of the death benefit or**
36 **ownership of any part of the policy, regardless of the date on which**
37 **compensation is paid to the viator.**

38 (b) The term does not include the following:

39 (1) A loan by an insurer under the terms of a ~~life insurance~~ policy,
40 including a loan secured by the cash value of a policy.

41 (2) An agreement with a bank, savings bank, savings and loan
42 association, credit union, or other licensed lending institution that

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1 takes an assignment of a ~~life insurance~~ policy as collateral for a
2 loan.

3 (3) The provision of accelerated death benefits by an insurer to an
4 insured under the provisions of a ~~life insurance contract~~; **policy**.

5 (4) Agreements between an insurer and a reinsurer.

6 (5) An agreement by a person who enters into not more than one
7 (1) such agreement in any five (5) year period to:

8 (A) purchase a ~~life insurance~~ policy; or

9 (B) contract for the transfer of a ~~life insurance~~ policy;

10 for a value that is less than the expected death benefit.

11 SECTION 19. IC 27-8-19.8-6.5 IS AMENDED TO READ AS
12 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 6.5. As used in this
13 chapter, "viaticated policy" means a ~~life insurance~~ policy or ~~certificate~~
14 that has been acquired by a viatical settlement provider under a viatical
15 settlement contract.

16 SECTION 20. IC 27-8-19.8-8 IS AMENDED TO READ AS
17 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 8. (a) As used in this
18 chapter, "viator" refers to the owner of a ~~life insurance~~ policy or a
19 ~~certificate holder~~ under a group policy that insures the life of an insured
20 who enters or seeks to enter into a viatical settlement contract.

21 (b) **The term does not include the following:**

22 (1) **A viatical settlement provider as provided by this chapter,**
23 **including an insurance producer acting as a viatical**
24 **settlement broker.**

25 (2) **A qualified institutional buyer (as defined in Rule 144A of**
26 **the Federal Securities Act of 1933 (15 U.S.C. 77a-77aa)).**

27 (3) **A financing entity.**

28 (4) **A special purpose entity.**

29 (5) **A related provider trust.**

30 SECTION 21. IC 27-8-19.8-8.3 IS ADDED TO THE INDIANA
31 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
32 [EFFECTIVE JULY 1, 2007]: **Sec. 8.3. If:**

33 (1) **there is more than one (1) owner of a single policy; and**

34 (2) **the owners of the policy are residents of different states;**
35 **a viatical settlement of the policy is governed by the law of the state**
36 **in which the owner having the largest percentage of ownership**
37 **resides or, if the owners hold equal ownership, the state of**
38 **residence of one (1) owner as agreed upon in writing by all owners.**

39 SECTION 22. IC 27-8-19.8-8.5 IS AMENDED TO READ AS
40 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 8.5. ~~The following must~~
41 ~~be licensed as an~~ (a) **Except as provided in section 8.6 of this**
42 **chapter, only a:**

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1 **(1) licensed** insurance producer with a life qualification under
 2 IC 27-1-15.6-7 **who is a resident of Indiana; or**
 3 **(2) nonresident insurance producer who is licensed with a life**
 4 **qualification in another state;**
 5 **and who has been licensed with the life qualification in the**
 6 **insurance producer's home state for at least one (1) year may act**
 7 **as**

8 ~~(1)~~ a viatical settlement broker.

9 ~~(2) A person who solicits, offers, or attempts to negotiate a~~
 10 ~~viatical settlement contract with a viator.~~

11 **(b) An insurance producer described in subsection (a) shall, not**
 12 **more than thirty (30) days after the first date the insurance**
 13 **producer acts as a viatical settlement broker:**

14 **(1) notify the commissioner, on a form prescribed by the**
 15 **commissioner:**

16 **(A) that the insurance producer is acting; and**

17 **(B) acknowledging that the insurance producer will act;**
 18 **as a viatical settlement broker in accordance with this**
 19 **chapter; and**

20 **(2) pay any notification fee determined by the commissioner.**

21 SECTION 23. IC 27-8-19.8-8.6 IS AMENDED TO READ AS
 22 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 8.6. The following ~~are~~
 23 ~~exempt from the licensing requirement under IC 27-8-19.8-8.5:~~ **may**
 24 **operate as a viatical settlement broker without meeting the**
 25 **requirements of section 8.5 of this chapter:**

26 (1) An accountant, an attorney, or a financial planner retained to
 27 represent the viator, and whose compensation is paid directly by
 28 or at the direction of the viator.

29 ~~(2) A regularly salaried officer or employee of a viatical~~
 30 ~~settlement broker or viatical settlement provider; if the officer or~~
 31 ~~employee's duties and responsibilities do not include the~~
 32 ~~solicitation or negotiation of viatical settlement contracts.~~

33 ~~(3)~~ **(2)** The following persons, to the extent that the person is
 34 engaged in the administration or operation of a program of
 35 employee benefits for the person's employees or the employees of
 36 the person's subsidiaries or affiliates involving the use of viatical
 37 settlement contracts issued by a ~~licensed~~ viatical settlement
 38 provider, if the person is not in any manner directly or indirectly
 39 compensated by the viatical settlement provider:

40 (A) An employer.

41 (B) An officer or employee of an employer.

42 (C) A trustee of an employee trust plan.

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1 SECTION 24. IC 27-8-19.8-8.7 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 8.7. **(a)** A viatical
 3 settlement broker:

4 (1) represents only the viator; and

5 (2) owes a fiduciary duty to the viator to act according to the
 6 viator's instructions and in the best interest of the viator;
 7 regardless of the manner in which the viatical settlement broker is
 8 compensated.

9 **(b) An insurer that issues a policy that is the subject of a**
 10 **possible viatical settlement contract is not responsible for an act or**
 11 **omission:**

12 **(1) of a viatical settlement broker or viatical settlement**
 13 **provider; and**

14 **(2) that arises out of or in connection with the viatical**
 15 **settlement;**

16 **unless the insurer receives compensation from the viatical**
 17 **settlement broker for placement of the viatical settlement contract,**
 18 **or from the viatical settlement provider for the viatical settlement**
 19 **contract.**

20 SECTION 25. IC 27-8-19.8-11 IS AMENDED TO READ AS
 21 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 11. The department
 22 shall investigate an applicant and issue a license to the applicant if the
 23 department finds all of the following:

24 (1) The applicant is competent and trustworthy and intends to act
 25 in good faith as a viatical settlement provider.

26 (2) The applicant has a good business reputation.

27 (3) The applicant has had the experience, training, or education
 28 to qualify the applicant as a viatical settlement provider.

29 (4) If the applicant is a corporation, or limited liability
 30 corporation, it is either:

31 (A) incorporated under Indiana law; or

32 (B) authorized to do business in Indiana.

33 **(5) The applicant has provided to the commissioner:**

34 **(A) a detailed plan of operation; and**

35 **(B) an antifraud plan that meets the requirements of this**
 36 **chapter.**

37 SECTION 26. IC 27-8-19.8-16 IS AMENDED TO READ AS
 38 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 16. **(a)** The department
 39 may at any time require a viatical settlement provider or an applicant
 40 ~~for a license~~ to disclose fully the identity of all of the viatical settlement
 41 provider's or applicant's officers, employees, partners, and
 42 stockholders.

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(b) A viatical settlement provider shall, less than thirty (30) days after a change, provide to the commissioner new or revised information concerning officers, stockholders that hold ten percent (10%) or more of the viatical settlement provider's stock, partners, directors, members, or designated employees.

SECTION 27. IC 27-8-19.8-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 17. (a) A viatical settlement provider shall file with the department an annual report containing information prescribed in rules adopted by the department under IC 4-22-2.

(b) The rules adopted by the department under subsection (a) shall must:

- (1) set the date by which annual reports must be submitted; and
- (2) limit the information included in an annual report to:
 - (A) viatical settlements in which the viator is an Indiana resident; and
 - (B) information that does not include:
 - (i) individual transaction data regarding the business of viatical settlements; or
 - (ii) data that compromises the privacy of personal, financial, and health information of the viator or insured.

(c) A viatical settlement provider shall maintain records of each viatical settlement at least five (5) years after the death of the insured.

SECTION 28. IC 27-8-19.8-17.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 17.2. (a) A licensee or a person described in section 8.6 of this chapter shall, for at least five (5) years, retain copies of all:

- (1) executed viatical settlement contracts, underwriting documents, policy forms, and viatical settlement contract applications from the date of the execution of the viatical settlement contract;
- (2) checks, drafts, or other evidence and documentation related to the payment, transfer, deposit, or release of funds from the date of a viatical settlement; and
- (3) other records and documents related to activities conducted under this chapter.

(b) If a licensee or person described in section 8.6 of this chapter retains documents specified in subsection (a) for more than five (5) years, the licensee or person shall produce the documents upon request from the commissioner.

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(c) Records described in subsection (a):

(1) must be legible and complete; and

(2) may be retained in paper, photographic, microprocess, magnetic, mechanical, or electronic media, or by a process that accurately reproduces or forms a durable medium for the reproduction of a record.

SECTION 29. IC 27-8-19.8-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 18. (a) ~~When the~~ department reasonably considers it necessary for the protection of the public, the department may examine the business and other affairs of a viatical settlement provider or an applicant.

(b) The department may order a viatical settlement provider or an applicant to produce records, books, files, or other information reasonably necessary to ascertain whether the viatical settlement provider or the applicant has violated or is violating the law or otherwise has acted or is acting contrary to the public interest.

(c) The viatical settlement provider or applicant shall pay the expenses of an examination conducted under this section.

(a) The commissioner may conduct an examination of a licensee as the commissioner, in the commissioner's sole discretion, determines appropriate.

(b) The commissioner may, for purposes of completing an examination of a licensee under this section, examine or investigate any person, or the business of any person, to the extent that the examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the licensee.

(c) Instead of an examination under this section of a nonresident licensee that is licensed in Indiana, the commissioner may accept an examination report concerning the licensee from the commissioner of insurance of the licensee's state of residence.

(d) Upon determining that an examination should be conducted under this section, the commissioner shall issue an examination warrant that appoints one (1) or more examiners to perform the examination and instructs the examiner as to the scope of the examination. In conducting the examination, the examiner shall observe:

(1) the guidelines and procedures set forth in the Examiners' Handbook adopted by the NAIC; and

(2) any guidelines and procedures prescribed by the commissioner, as determined appropriate by the commissioner.

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(e) A person from whom information is sought in connection with an examination under this section, and the person's officers, directors, and agents, shall provide to an examiner appointed under subsection (d) timely, convenient, and free access:

- (1) at all reasonable hours at the person's offices; and
- (2) to all books, records, accounts, papers, documents, assets, and computer or other recordings related to the property, assets, business, and affairs of the licensee being examined.

The officers, directors, employees, and agents of the person shall facilitate the examination and aid in the examination to the extent possible.

(f) The refusal of a licensee, by the licensee's officers, directors, employees, or agents, to submit to examination or to comply with a reasonable written request from the commissioner is grounds for denial, suspension, or nonrenewal, after a proceeding under IC 4-21.5, of the licensee's license or authority to engage in the business of viatical settlements or other business that is subject to the commissioner's jurisdiction.

(g) The commissioner may issue subpoenas, administer oaths, and examine under oath any person as to any matter relevant to an examination. If the person fails or refuses to obey a subpoena, the commissioner may petition a court with jurisdiction and, upon proper showing, the court may enter an order compelling the person to appear and testify or produce documentary evidence. Failure to obey the court order is punishable as contempt of court.

(h) When making an examination under this section, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, and other professionals and specialists as examiners. The reasonable cost of the services provided by persons appointed under this subsection must be borne by the licensee that is the subject of the examination.

(i) This section does not limit the commissioner's authority to do the following:

- (1) Terminate or suspend an examination and pursue other legal action under this title. Findings of fact and conclusions made under an examination are prima facie evidence in a legal action referred to in this subsection.
- (2) Use and, if appropriate, make public:
 - (A) a final or preliminary examination report;
 - (B) examiner or licensee work papers or other documents;
 - or
 - (C) other information discovered or developed during the

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course of an examination;
in the furtherance of a legal action that the commissioner, in
the commissioner's sole discretion, considers appropriate.

(j) Examination reports must be comprised solely of:

(1) facts that:

(A) appear on the books, records, or other documents of
the licensee, the licensee's agents, or other persons
examined; or

(B) are ascertained from the testimony of the licensee's
officers or agents or other persons examined concerning
the licensee's affairs; and

(2) conclusions and recommendations the examiners find
reasonably warranted from the facts described in subdivision
(1).

(k) Not later than sixty (60) days after completion of an
examination, the examiner in charge shall file with the
commissioner a verified written report of examination under oath.

(l) Upon receipt of a report described in subsection (k), the
commissioner shall transmit to the licensee:

(1) the report; and

(2) notice that the licensee may, not more than thirty (30) days
after receiving the notice, make a written submission or
rebuttal with respect to matters contained in the report.

(m) If the commissioner determines, as a result of an
examination, that regulatory action is appropriate, the
commissioner may initiate proceedings as provided by law.

SECTION 30. IC 27-8-19.8-18.1 IS ADDED TO THE INDIANA
CODE AS A NEW SECTION TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 2007]: Sec. 18.1. (a) Names and individual
identification data for viators are confidential for purposes of
IC 5-14-3-4(a)(1) and may not be disclosed by the commissioner,
unless required by law.

(b) Except as otherwise provided in this chapter or in the law of
another state or jurisdiction that is substantially similar to this
chapter:

(1) an examination report;

(2) a working paper;

(3) recorded information;

(4) another document; or

(5) a copy of an item described in subdivision (1), (2), (3), or
(4);

that is produced by, obtained by, or disclosed to the commissioner

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or another person in the course of an examination made under this chapter or the law of another state or jurisdiction that is substantially similar to this chapter, or in the course of analysis or investigation by the commissioner of the financial condition or market conduct of a licensee, is confidential for purposes of IC 5-14-3-4(a)(1) and privileged, not subject to subpoena, and not subject to discovery or admissible in evidence in a private civil action.

(c) The commissioner may use information specified in subsection (a) in the furtherance of a legal action brought as part of the commissioner's official duties.

(d) Documents, materials, and other information, including working papers and copies of documents, materials, and other information, in the possession or control of the NAIC and affiliates and subsidiaries of the NAIC are confidential and privileged, not subject to subpoena, and not subject to discovery or admissible in evidence in a private civil action if the documents, materials, or other information are:

(1) created, produced, or obtained by or disclosed to the NAIC and affiliates and subsidiaries of the NAIC in the course of assisting an examination made under this chapter or assisting a commissioner in the analysis or investigation of the financial condition or market conduct of a licensee; or

(2) disclosed to the NAIC and affiliates and subsidiaries of the NAIC under subsection (f) by the commissioner;

(e) Neither the commissioner nor a person that receives documents, materials, or other information while acting under the authority of the commissioner, including the NAIC and affiliates and subsidiaries of the NAIC, may testify in a private civil action concerning confidential documents, materials, or information described in subsection (a).

(f) To assist in the performance of the commissioner's duties, the commissioner:

(1) may share documents, materials, and other information, including confidential and privileged documents, materials, and information described in subsection (a), with other state, federal, and international regulatory agencies, the NAIC and affiliates and subsidiaries of the NAIC, and state, federal, and international law enforcement authorities, if the recipient agrees to maintain the confidentiality and privileged status of the documents, materials, and other information;

(2) may receive documents, materials, and other information,

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including otherwise confidential and privileged documents, materials, or information, from the NAIC, affiliates and subsidiaries of the NAIC, and regulatory and law enforcement officials of other jurisdictions in the United States; and (3) shall maintain as confidential or privileged a document, material, or information received with notice or the understanding that the document, material, or information is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.

(g) The:

(1) disclosure to the commissioner under this section of documents, materials, or information described in subsection (f); or

(2) sharing of the documents, materials, or information as authorized by subsection (f):

does not result in a waiver of an applicable privilege or claim of confidentiality in the documents, materials, or information.

(h) A privilege established under a law of another state or jurisdiction that is substantially similar to the privilege established under this section is available and enforceable in a proceeding in, and in a court of, Indiana.

(i) This section does not prevent or prohibit the commissioner from disclosing the content of an examination report, preliminary examination report or results, or a matter relating to an examination report or preliminary examination report or results, to the commissioner of another state or country, law enforcement officials of Indiana or another state or agency of the federal government, or the NAIC, if the entity receiving the report or matters relating to the report agrees in writing to hold the report or matters confidential and in a manner consistent with this section.

SECTION 31. IC 27-8-19.8-18.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 18.2. (a) An examiner may not be appointed under section 18(d) of this chapter if the examiner, directly or indirectly:**

(1) has a conflict of interest with;

(2) is affiliated with the management of; or

(3) owns a pecuniary interest in;

a person subject to examination under this chapter.

(b) Subsection (a) does not automatically preclude an examiner from being:

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1 (1) a viator;
 2 (2) an insured; or
 3 (3) a beneficiary;
 4 of a policy that is proposed to be the subject of a viatical settlement
 5 contract.

6 (c) The commissioner may retain, on an individual basis,
 7 qualified actuaries, certified public accountants, and other similar
 8 independently practicing individuals, regardless of whether they
 9 may be similarly employed or retained by a person that is subject
 10 to examination under this chapter.

11 SECTION 32. IC 27-8-19.8-18.3 IS ADDED TO THE INDIANA
 12 CODE AS A NEW SECTION TO READ AS FOLLOWS
 13 [EFFECTIVE JULY 1, 2007]: **Sec. 18.3. (a) A cause of action does**
 14 **not arise, and liability shall not be imposed, against the**
 15 **commissioner, the commissioner's authorized representative, or an**
 16 **examiner appointed by the commissioner for a statement made or**
 17 **conduct performed in good faith while implementing this chapter.**

18 (b) A cause of action does not arise, and liability shall not be
 19 imposed, against a person for communicating or delivering
 20 information or data to the commissioner, the commissioner's
 21 authorized representative, or an examiner appointed by the
 22 commissioner related to an examination made under this chapter
 23 if the communication or delivery is performed in good faith and
 24 without fraudulent intent or the intent to deceive.

25 (c) Subsection (b) does not abrogate or modify a common law or
 26 statutory privilege or immunity of a person specified in subsection
 27 (a).

28 (d) A person specified in subsection (a) or (b) is entitled to an
 29 award of attorney's fees and costs if the person is the prevailing
 30 party in a civil cause of action for libel, slander, or another
 31 relevant tort arising out of activities undertaken to implement this
 32 chapter.

33 SECTION 33. IC 27-8-19.8-18.4 IS ADDED TO THE INDIANA
 34 CODE AS A NEW SECTION TO READ AS FOLLOWS
 35 [EFFECTIVE JULY 1, 2007]: **Sec. 18.4. The commissioner may**
 36 **investigate a:**

- 37 (1) suspected fraudulent viatical settlement act; and
 38 (2) person engaged in the business of viatical settlements.

39 SECTION 34. IC 27-8-19.8-19 IS AMENDED TO READ AS
 40 FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 19. (a)** After a hearing
 41 under IC 4-21.5, the department may suspend, revoke, or refuse to
 42 renew a viatical settlement provider's license, or impose a civil penalty,

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or both, if the department finds any of the following:

(1) There was a **material** misrepresentation in the application for the license.

(2) The viatical settlement provider is or:

(A) an officer of;

(B) a partner in;

(C) a member of; or

(D) a key member of management of;

the viatical settlement provider has been shown to be untrustworthy or incompetent to act as a viatical settlement provider.

(3) The viatical settlement provider demonstrates a pattern of unreasonable payments to viators.

(4) The viatical settlement provider has been convicted of, or pleaded guilty or nolo contendere to, an offense the definition of which includes fraudulent acts as an element of the offense regardless of whether a ~~judgement~~ **judgment** has been entered by the court.

(5) The viatical settlement provider no longer meets the requirements for initial licensure.

(6) The viatical settlement provider has failed to honor the contractual obligations of a viatical settlement contract.

(7) The viatical settlement provider, **including an officer of, a partner in, a member of, or a key member of management of the viatical settlement provider**, has violated this chapter.

(8) The viatical settlement provider has assigned, transferred, or pledged a viaticated policy to a person other than:

(A) a viatical settlement provider licensed under this chapter;

(B) an accredited investor or qualified institutional buyer (as defined in Regulation D, Rule 501, or Rule 144A of the federal Securities Act of 1933 (15 U.S.C. 77a -77aa));

(C) a financing entity;

(D) a special purpose entity; or

(E) a related provider trust.

(9) The viatical settlement provider has facilitated the change of state of residency of a policy or a viator to avoid compliance with this chapter.

(b) The commissioner may, after a proceeding held under IC 4-21.5, suspend, revoke, or refuse to renew an insurance producer's license under IC 27-1-15.6 if the commissioner finds that the insurance producer has:

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- (1) violated this chapter;
- (2) received a fee, a commission, or other valuable consideration for the insurance producer's services with respect to a viatical settlement contract that involved:
 - (A) an unlicensed viatical settlement provider;
 - (B) a person who offered or attempted to negotiate a viatical settlement contract and:
 - (i) was not a viatical settlement broker; or
 - (ii) dealt in bad faith with a viator;
- (3) facilitated a change of state of residency of a policy or a viator to avoid compliance with this chapter; or
- (4) dealt in bad faith with a viator.

SECTION 35. IC 27-8-19.8-20.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 20.1. An insurer that issues a policy shall, on a form prescribed by the commissioner, respond to a request from a viatical settlement provider or viatical settlement broker for verification of coverage:**

- (1) not more than thirty (30) calendar days after the date the request is received by the insurer;
- (2) by:
 - (A) completing and issuing; or
 - (B) indicating in what respects the insurer is unable to issue;
- the verification of coverage; and
- (3) indicating whether, based on medical evidence and documents available to the insurer, the insurer will investigate the validity of the policy.

SECTION 36. IC 27-8-19.8-21, AS AMENDED BY P.L.223-2005, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 21. (a) A viatical settlement contract must establish the terms under which the viatical settlement provider will pay value, in return for the viator's assignment, bequest, devise, sale, or transfer of the death benefit, certificate, or ownership of the insurance policy to the viatical settlement provider.**

(b) Subject to subsection (c), a viatical settlement contract must provide for the unconditional rescission of the contract by the viator for during the longer shorter of the following:

- (1) The period ending not more than fifteen (15) days after the receipt of the viatical settlement proceeds by the viator. ~~or~~
- (2) The period ending not more than thirty (30) days after execution of the contract.

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(c) The rescission of a viatical settlement contract under subsection (b) is effective only if:

(1) notice of the rescission is provided; and

(2) repayment of proceeds and premiums, loans, and loan interest is made;

to the viatical settlement provider during the period described in subsection (b).

(d) A viatical settlement contract is rescinded if the insured dies during the rescission period, subject to repayment to the viatical settlement provider, **not more than forty-five (45) days after the date the insured dies**, of all proceeds and any premiums, loans, and loan interest that have been paid by the viatical settlement provider.

SECTION 37. IC 27-8-19.8-21.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 21.5. If the insured under a policy does not have a terminal illness or a chronic illness, the payment under a viatical settlement contract involving the policy must be in an amount greater than the cash surrender value or accelerated death benefit available under the policy at the time the viatical settlement contract is entered into.**

SECTION 38. IC 27-8-19.8-23, AS AMENDED BY P.L.223-2005, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 23. (a) A viatical settlement provider or viatical settlement broker shall, not later than the date of application, provide to a viator a brochure approved by the commissioner and describing the viatical settlement process. If a brochure describes only a viatical settlement contract in which the insured does not have a ~~catastrophic or life threatening~~ **terminal illness or chronic illness, or condition**; the brochure may use the term "life settlement" in place of the term "viatical settlement".

(b) A viatical settlement provider or viatical settlement broker shall, in a separate document that is signed by the viator and the viatical settlement provider or viatical settlement broker, disclose the following information to the viator not later than the date of application:

(1) Possible alternatives to viatical settlement contracts, including accelerated benefits or policy loans offered by the issuer of the ~~life insurance~~ policy.

(2) Federal and state tax consequences that may result from entering into a viatical settlement contract, and that the viator should seek assistance from a professional tax advisor.

(3) Possible:

(A) adverse effect on eligibility for; or

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(B) interruption of assistance provided by;
 medical or public assistance programs as a consequence of
 entering into a viatical settlement contract, and that the viator
 should seek advice from the appropriate government agencies.

(4) The viator's right to rescind a viatical settlement contract as
 provided in section 21 of this chapter.

~~(5) The amount of any fees paid by a viatical settlement provider~~
to a In the case of a viatical settlement broker, that the viatical
 settlement broker:

(A) represents only the viator;

**(B) does not represent the insurer or the viatical settlement
 provider; and**

**(C) owes a duty to the viator to act according to the
 viator's instructions.**

(6) A statement that proceeds of the viatical settlement could be
 subject to claims of creditors.

(7) A statement that:

(A) entering into a viatical settlement contract may cause other
 rights or benefits under the policy, including conversion rights,
 waiver of premium benefits, family riders, or coverage of a life
 other than the insured, to be forfeited by the viator; and

(B) the viator should seek advice from a financial advisor.

~~(8) The procedure for contacts with the insured:~~

~~(9)~~ **(8)** That the proceeds of the viatical settlement will be
 transferred to the viator as provided in section 24.2 of this
 chapter.

~~(10)~~ **(9)** A statement containing the following language:

"All medical, financial, or personal information solicited or
 obtained by a viatical settlement provider or viatical settlement
 broker about an insured, including the insured's identity or the
 identity of family members, a spouse, or a significant other
 may be disclosed as necessary to effect the viatical settlement
 between the viator and the viatical settlement provider. If you
 are asked to provide this information, you will be asked to
 consent to the disclosure. The information may be provided to
 someone who buys the policy or provides funds for the
 purchase. You may be asked to renew your permission to share
 information every two years."

~~(11)~~ **(10)** That the insured may be contacted by the viatical
 settlement provider or viatical settlement broker to determine the
 health status of the insured in accordance with section 24.9 of this
 chapter.

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(c) The viatical settlement provider shall disclose the following information to the viator, conspicuously displayed in the viatical settlement contract or in a separate document signed by the viatical settlement provider and the viator, before a viatical settlement contract is signed:

(1) Any affiliation between the viatical settlement provider and the insurer that issued the ~~life insurance policy or certificate~~ that is the subject of the viatical settlement contract.

(2) The name, address, and telephone number of the viatical settlement provider.

(3) If the ~~life insurance policy or certificate~~ that is the subject of the viatical settlement contract was issued as a joint policy or includes family riders or any coverage of an individual other than the insured:

(A) the possible loss of coverage of the other individuals under the policy; ~~or certificate~~; and

(B) that the viator should consult with the viator's insurance producer or the insurer that issued the policy ~~or certificate~~ for advice concerning the proposed viatical settlement contract.

(4) The:

(A) dollar amount of the current death benefit payable to the viatical settlement provider; and

(B) if known, the:

(i) availability of any additional guaranteed insurance benefits;

(ii) dollar amount of any accidental death and dismemberment benefits; and

(iii) viatical settlement provider's interest in the benefits described in items (i) and (ii);

under the policy. ~~or certificate~~.

(5) The:

(A) name, business address, and telephone number of the trustee or escrow agent described in section 24.2 of this chapter; and

(B) right of the viator or insured to inspect or receive copies of the relevant escrow or trust agreements or documents.

~~(d) A viatical settlement broker shall disclose to the viator, conspicuously displayed in the viatical settlement contract or in a separate document signed by the viatical settlement broker and the viator before a viatical settlement contract is signed, the amount and method of calculation of the viatical settlement broker's compensation.~~

~~(e)~~ (d) If a viatical settlement provider transfers ownership or

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changes the beneficiary of a viaticated policy, the viatical settlement provider shall, not more than twenty (20) days after the transfer or change occurs, inform the insured of the transfer or change.

SECTION 39. IC 27-8-19.8-24, AS AMENDED BY P.L.223-2005, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 24. A viatical settlement provider shall obtain the following: ~~before entering into a viatical settlement contract:~~

(1) **Before entering into or effectuating a viatical settlement contract:**

(A) if the viator is the insured, a written statement from a licensed attending physician that the insured is of sound mind and under no constraint or undue influence; **and**

(B) a statement signed by the viator and witnessed by two (2) disinterested witnesses in which the viator discloses the identity of any person that served as a viatical settlement broker in connection with the viatical settlement contract.

(2) **Before or at the time of execution of a viatical settlement contract,** a document signed by the viator and witnessed by two

(2) disinterested witnesses in which the viator does the following:

(A) Consents to the viatical settlement contract.

(B) If the insured has a ~~catastrophic or life threatening terminal illness or chronic illness, or condition;~~ acknowledges **that:**

(i) the catastrophic or life threatening insured has a terminal illness or chronic illness; or condition; and

(ii) the terminal illness or chronic illness was diagnosed after the policy was issued.

(C) Represents that the viator has a full and complete understanding of the viatical settlement contract.

(D) Represents that the viator has a full and complete understanding of the benefits of the ~~life insurance~~ policy.

(E) Acknowledges that the viator ~~has entered~~ **is entering** into the viatical settlement contract freely and voluntarily.

~~(F) Discloses the identity of any person that served as a viatical settlement broker in connection with the viatical settlement contract.~~

(3) A document in which the insured consents to the release of the insured's medical records.

SECTION 40. IC 27-8-19.8-24.7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 24.7. Except as otherwise ~~provided~~ **required** by law, a person with actual knowledge of a viator's **or insured's** identity ~~may~~ **shall** not disclose that identity

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to another person unless the disclosure is:

(1) necessary to effect a viatical settlement contract **between a viator and the viatical settlement provider** and the viator ~~has provided or insured, or both if required, provide prior~~ written consent to the disclosure;

(2) provided in response to an investigation **or examination** by the commissioner or other governmental officer or agency; ~~or~~

(3) ~~in connection with a term of or condition to~~ a transfer of a viatical settlement contract or viaticated policy to another licensed **by one (1) viatical settlement provider or to an entity that provides financing to effect the viatical settlement contract under a written agreement with a licensed another** viatical settlement provider;

(4) necessary to permit a financing entity, related provider trust, or special purpose entity to finance the purchase of a policy by a viatical settlement provider and the viator and insured have provided prior written consent to the disclosure;

(5) necessary to allow the viatical settlement provider or the viatical settlement provider's authorized representative to make contacts to determine health status; or

(6) required to purchase stop loss coverage.

SECTION 41. IC 27-8-19.8-25 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 25. The department may adopt rules under IC 4-22-2 to **do the following**:

(1) Establish standards for evaluating the reasonableness of payments under viatical settlement contracts **involving an insured who has a terminal illness or a chronic illness**, including regulation of discount rates used to determine the amount paid in exchange for an assignment, a bequest, a devise, a sale, or a transfer of a benefit under a ~~life insurance~~ policy.

(2) Establish:

(A) licensing requirements, fees, and standards for continued licensure for a viatical settlement provider; and

(B) a fee for an insurance producer that meets the requirements of section 8.5 of this chapter and acts as a viatical settlement broker.

(3) Require a bond or another mechanism for financial accountability for a viatical settlement provider.

(4) Govern the relationship and responsibilities of an insurer, a viatical settlement provider, a viatical settlement broker, an insurance producer that meets the requirements of section 8.5 of this chapter and acts as a viatical settlement broker, and

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another person in the business of viatical settlements during the period of consideration or effectuation of a viatical settlement contract.

SECTION 42. IC 27-8-19.8-25.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 25.2. (a) This section applies to advertising of viatical settlement contracts or related products or services intended for dissemination in Indiana, including Internet advertising viewed by individuals in Indiana.**

(b) An advertisement of a licensee's contracts, products, and services, regardless of by whom the advertisement is written, created, designed, or presented, is the responsibility of:

(1) the licensee; and

(2) the person that writes, creates, designs, or presents the advertisement.

(c) A licensee shall establish and maintain a system of control over the content, form, and method of dissemination of an advertisement described in subsection (b), including regular routine notification, at least one (1) time per year, to agents and other persons that are authorized to disseminate the advertisement, of the requirements and procedures for approval before the use of an advertisement that is not furnished by the licensee.

(d) An advertisement must:

(1) be truthful and not misleading in fact or by implication;

(2) be in a form and have content that is sufficiently complete and clear to avoid deception when the advertisement concerns a viatical settlement contract; and

(3) not have the capacity or tendency to mislead or deceive, as determined by the commissioner, from the overall impression that the advertisement may be reasonably expected to create upon an individual of average education or intelligence in the segment of the public to which the advertisement is directed.

(e) The following provisions apply to an advertisement:

(1) An advertisement may not omit material information or use words, phrases, statements, references, or illustrations if the omission or use has the capacity, tendency, or effect of misleading or deceiving the public as to the nature or extent of a benefit, loss covered, or state or federal tax consequence. The existence of any of the following does not remedy a misleading statement:

(A) The availability of a viatical settlement contract for inspection before consummation of the sale of the policy.

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- 1 **(B) An offer to refund the payment made to the viator if**
 2 **the viator is not satisfied.**
 3 **(C) A viatical settlement contract that includes a free look**
 4 **period that satisfies or exceeds legal requirements.**
 5 **(2) An advertisement may not use the name or title of an**
 6 **insurer or a policy unless the advertisement has been**
 7 **approved by the insurer.**
 8 **(3) An advertisement may not state or imply that interest**
 9 **charged on an accelerated death benefit or a policy loan is**
 10 **unfair, inequitable, or in any manner an incorrect or**
 11 **improper practice.**
 12 **(4) The terms "free", "no cost", "without cost", "no**
 13 **additional cost", "at no extra cost", or similar terms may not**
 14 **be used with respect to a benefit or service, unless the term is**
 15 **true. An advertisement may:**
 16 **(A) specify the charge for a benefit or service;**
 17 **(B) state that a charge is included in the payment; or**
 18 **(C) use other appropriate language.**
 19 **(5) A testimonial, an appraisal, an analysis, or an**
 20 **endorsement used in an advertisement must:**
 21 **(A) be genuine;**
 22 **(B) represent the current opinion of the author;**
 23 **(C) be applicable to the viatical settlement contract,**
 24 **product, or service advertised; and**
 25 **(D) be accurately reproduced with sufficient completeness**
 26 **to avoid misleading or deceiving prospective viators as to**
 27 **the nature or scope of the testimonial, appraisal, analysis,**
 28 **or endorsement.**
 29 **In using a testimonial, an appraisal, an analysis, or an**
 30 **endorsement, a licensee makes as the licensee's own all**
 31 **statements contained in the testimonial, appraisal, analysis, or**
 32 **endorsement and the statements are subject to this section.**
 33 **(6) If an individual making a testimonial, an appraisal, an**
 34 **analysis, or an endorsement:**
 35 **(A) has a financial interest in a viatical settlement provider**
 36 **or related entity as a stockholder, a director, an officer, an**
 37 **employee, or otherwise; or**
 38 **(B) receives a direct or an indirect benefit, other than**
 39 **required union scale wages;**
 40 **the existence of the financial interest or benefit must be**
 41 **prominently disclosed in the advertisement in which the**
 42 **testimonial, appraisal, analysis, or endorsement is used.**

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(7) An advertisement may not state or imply that a viatical settlement contract, benefit, or service has been approved or endorsed by a group of individuals, a society, an association, or another organization unless:

(A) the approval or endorsement has occurred; and

(B) any relationship between an organization and the licensee is disclosed.

(8) If an entity that makes an endorsement or a testimonial:

(A) is owned, controlled, or managed by a licensee; or

(B) receives a payment or other consideration from a licensee for making the endorsement or testimonial; that fact must be disclosed in the advertisement.

(9) If an endorsement refers to benefits received under a viatical settlement contract, all pertinent information concerning the viatical settlement contract must be retained for at least five (5) years after the endorsement is used.

(f) Information that must be disclosed under subsection (e) must not be minimized, rendered obscure, presented in an ambiguous manner, or intermingled with the text of the advertisement so as to be confusing or misleading.

(g) An advertisement must not contain statistical information unless:

(1) the statistical information accurately reflects recent and relevant facts; and

(2) the source of the statistics used in the advertisement is identified.

(h) An advertisement must not disparage an insurer, a viatical settlement provider, a viatical settlement broker, an insurance producer, a policy, a service, or a method of marketing.

(i) In an advertisement concerning a licensee or a licensee's viatical settlement contract, products, or services:

(1) the name, address, and telephone number of the licensee must be clearly identified;

(2) if a specific viatical settlement contract is advertised, the viatical settlement contract must be identified by form number or another appropriate description; and

(3) if an application is part of the advertisement, the name of the viatical settlement provider must appear on the application.

(j) An advertisement must not include a trade name, group designation, name of the parent company of a licensee, name of a particular division of the licensee, service mark, slogan, symbol, or

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another device or reference without disclosing the name of the licensee if the inclusion would:

- (1) have the capacity or tendency to mislead or deceive as to the true identity of the licensee; or
- (2) create the impression that a person other than the licensee has any responsibility for the financial obligation under a viatical settlement contract.

(k) An advertisement must not include a combination of words, symbols, or physical materials that by the content, phraseology, shape, color, or other characteristics of the combination:

- (1) is so similar to a combination of words, symbols, or physical materials used by a government program or agency; or
- (2) otherwise appears to be of such a nature;

that the combination tends to mislead a prospective viator into believing that the solicitation is in some manner connected with a government program or agency.

(l) An advertisement may:

- (1) reflect that a licensee is licensed in the state where the advertisement appears if the advertisement does not:
 - (A) exaggerate the licensee's licensure in the state; or
 - (B) suggest or imply that a competing licensee may not also be licensed in the state; and
- (2) ask the audience to consult the licensee's Internet web site or contact the department of insurance to determine:
 - (A) whether the state requires licensure; and
 - (B) if the state requires licensure, whether the licensee or another viatical settlement provider is licensed.

(m) An advertisement must not create the impression that:

- (1) a viatical settlement provider;
- (2) a viatical settlement provider's financial condition or status;
- (3) the payment of a viatical settlement provider's claims; or
- (4) the merits, desirability, or advisability of a viatical settlement provider's viatical settlement contracts;

are recommended or endorsed by a government entity.

(n) An advertisement:

- (1) must state the name of the actual licensee; and
- (2) must not use a trade name, a group designation, the name of an affiliate or a controlling entity of the licensee, a service mark, a slogan, a symbol, or another device in a manner that would have the capacity or tendency to mislead or deceive as

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to the true identity of the actual licensee or create the false impression that an affiliate or a controlling entity would have any responsibility for the financial obligation of the licensee.

(o) An advertisement must not directly or indirectly create the impression that a division or an agency of Indiana or of the federal government endorses, approves, or favors:

(1) a licensee or a licensee's business practices or methods of operation;

(2) the merits, desirability, or advisability of a viatical settlement contract;

(3) a viatical settlement contract; or

(4) a policy or an insurer.

(p) If an advertiser emphasizes the speed with which a viatical settlement contract will occur, the advertisement must disclose, based upon facts concerning the business of the licensee that is the subject of the advertisement, the average time frame:

(1) from the completed application to the date of offer of a viatical settlement contract; and

(2) from acceptance of the offer of the viatical settlement contract to receipt of the funds by the viator.

(q) If an advertisement emphasizes a dollar amount available to a viator, the advertisement must disclose the average purchase price as a percent of face value obtained by viators that entered into a viatical settlement contract with the licensee during the previous six (6) months.

SECTION 43. IC 27-8-19.8-25.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 25.3. (a) A person shall not commit a fraudulent viatical settlement act.

(b) A person may not knowingly or intentionally interfere with:

(1) the enforcement of this chapter; or

(2) an investigation of a suspected or an actual violation of this chapter.

(c) A person in the business of viatical settlements may not knowingly or intentionally permit a person convicted of a felony involving dishonesty or breach of trust to participate in the business of viatical settlements.

(d) A viatical settlement contract and an application for a viatical settlement contract, regardless of the form of transmission, must contain the following statement or a substantially similar statement:

"A person who knowingly presents false information in an

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1 application for insurance or a viatical settlement contract is guilty
2 of a crime and may be subject to fines and confinement in prison.".

3 (e) The lack of the statement required under subsection (d) does
4 not constitute a defense to a prosecution under IC 35-43-5-4.5
5 against a person who commits a fraudulent viatical settlement act.

6 (f) A person that is engaged in the business of viatical
7 settlements and has knowledge or a reasonable belief that a
8 fraudulent viatical settlement act is being, will be, or has been
9 committed shall provide to the commissioner the information
10 required, and in a manner prescribed, by the commissioner.

11 (g) A person that has knowledge or a reasonable belief that a
12 fraudulent viatical settlement act is being, will be, or has been
13 committed may provide to the commissioner the information
14 required, and in a manner prescribed, by the commissioner.

15 (h) Civil liability may not be imposed on, and a cause of action
16 may not arise from, a person's furnishing information concerning
17 a suspected, an anticipated, or a completed fraudulent viatical
18 settlement act or a suspected or completed fraudulent insurance
19 act, if the information is provided to or received from:

20 (1) the commissioner or the commissioner's employee, agent,
21 or representative;

22 (2) a federal, state, or local law enforcement or regulatory
23 official or an employee, an agent, or a representative of a
24 federal, state, or local law enforcement or regulatory official;

25 (3) a person that is involved in the prevention and detection of
26 a fraudulent viatical settlement act or the person's agent,
27 employee, or representative;

28 (4) the NAIC, the National Association of Securities Dealers,
29 the North American Securities Administrators Association, an
30 employee, agent, or representative of the NAIC, the National
31 Association of Securities Dealers, or the North American
32 Securities Administrators Association, or another regulatory
33 body that oversees life insurance or viatical settlement
34 contracts; or

35 (5) the insurer that issued the policy covering the life of the
36 insured.

37 (i) Subsection (h) does not apply to statements made with actual
38 malice. In an action brought against a person for filing a report or
39 furnishing other information concerning a fraudulent viatical
40 settlement act or a fraudulent insurance act, the party bringing the
41 action must specifically plead an allegation to which subsection (h)
42 does not apply because the person filing the report or furnishing

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the information did so with actual malice.

(j) A person identified in subsection (h) is entitled to an award of attorney's fees and costs if the:

- (1) person is the prevailing party in a civil cause of action for libel, slander, or another relevant tort arising out of activities in which the person engaged to comply with this chapter; and
- (2) party bringing the action did not have a reasonable basis in law or fact to initiate the action.

(k) This section does not abrogate or modify common law or statutory privileges or immunities of a person described in subsection (h).

(l) Subsection (h) does not apply to a person's furnishing information concerning the person's own suspected, anticipated, or completed fraudulent viatical settlement act or suspected, anticipated, or completed fraudulent insurance act.

SECTION 44. IC 27-8-19.8-25.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 25.5. (a) It is a violation of this chapter for a person to enter into a viatical settlement contract less than two (2) years after the date of issuance of the policy unless the viator certifies to the viatical settlement provider that one (1) or more of the following conditions have been met during the two (2) year period:**

- (1) The policy was issued upon the viator's exercise of conversion rights arising out of a policy, if the total of the time covered under the conversion policy plus the time covered under the prior policy is at least twenty-four (24) months. The time covered under a group policy is calculated without regard to a change in insurers if the coverage has been continuous and under the same group sponsorship.

(2) The viator submits independent evidence to the viatical settlement provider that one (1) or more of the following conditions have been met during the two (2) year period:

(A) The viator or insured has a terminal illness or chronic illness.

(B) A final order, judgment, or decree is entered by a court with jurisdiction, on the application of a creditor of the viator:

- (i) adjudicating the viator bankrupt or insolvent;
- (ii) approving a petition seeking reorganization of the viator; or
- (iii) appointing a receiver, trustee, or liquidator to all or

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- 1 a substantial part of the viator's assets.
- 2 (b) A viatical settlement provider shall, at the time the viatical
- 3 settlement provider submits a request to an insurer for verification
- 4 of coverage, submit to the insurer copies of:
- 5 (1) independent evidence described in subsection (a)(2);
- 6 (2) the document required by section 24(3) of this chapter;
- 7 and
- 8 (3) a letter of attestation from the viatical settlement provider
- 9 that the copies are true and correct copies of the independent
- 10 evidence and documents received by the viatical settlement
- 11 provider.
- 12 (c) If a viatical settlement provider submits to an insurer a copy
- 13 of independent evidence described in subsection (a)(2) when the
- 14 viatical settlement provider submits a request to the insurer to
- 15 effect the transfer of a policy to the viatical settlement provider:
- 16 (1) the copy is considered to conclusively establish that the
- 17 viatical settlement contract satisfies the requirements of this
- 18 chapter; and
- 19 (2) the insurer shall timely respond to the request.
- 20 (d) A violation of this chapter is an unfair and deceptive act or
- 21 practice in the business of insurance under IC 27-4-1-4.
- 22 SECTION 45. IC 34-30-2-116.3 IS ADDED TO THE INDIANA
- 23 CODE AS A NEW SECTION TO READ AS FOLLOWS
- 24 [EFFECTIVE JULY 1, 2007]: Sec. 116.3. IC 27-8-19.8-25.3(h)
- 25 (Concerning the furnishing of information about a possible
- 26 fraudulent viatical settlement act).
- 27 SECTION 46. THE FOLLOWING ARE REPEALED [EFFECTIVE
- 28 JULY 1, 2007]: IC 27-8-19.8-4.3; IC 27-8-19.8-9.2.

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